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UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

DIGIDEAL CORPORATION, a
Washington Corporation

Plaintiff,

vs.

SHUFFLE TECH INTERNATIONAL,
LLC, an Illinois Corporation, RICHARD
SCHULTZ, an individual, and
POYDRAS-TALRICK HOLDINGS
LLC, a Delaware Corporation

Defendants.

Case No. 14-277

COMPLAINT

Plaintiff, DigiDeal, by and through its attorney of record, Eowen S. Rosentrater,
appears and states by way of Complaint, the following:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff, DigiDeal, is a Nevada corporation with an address of 5207 E. Third
Avenue, Spokane Valley, WA 99212, organized and existing under the laws of the State
of Nevada with its principal place of business in Washington.

1 1.2 Defendant Shuffle Tech International LLC, refers to itself throughout
2 correspondence with DigiDeal as well as on its website as Shuffle Tech International
3 LLC (hereinafter “Shuffle Tech”). Shuffle Tech is a home card shuffler manufacturer,
4 licensed to do business in Illinois, with an address of 1440 N. Kingsbury Street, Suite
5 281, Chicago, IL 60642.
6

7
8 1.3 Defendant Richard Shultz is an individual who, upon information and belief,
9 is a resident of the State of Illinois.
10

11 1.4 Defendant, Poydras-Talrick, refers to itself throughout dealings with
12 DigiDeal as well as in the Agreements as Poydras-Talrick Holdings LLC (hereinafter
13 “Poydras”). Poydras appears to be incorporated in the state of Delaware. Under the
14 Agreements between the parties, it lists its own address as 2217 Veterans Memorial
15 Blvd., Suite 186, Metairie, LA 70002.
16

17 1.5 Subsequently, Shuffle Tech and DigiDeal entered into a valid Exclusive
18 Patent Technology License Agreement wherein they agreed to have Washington law
19 govern an agreement relating to the same subject matter, and also consented to submit to
20 the exclusive jurisdiction of the courts of the State of Washington and of the United
21 States of America located in Washington State.
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1.6 Personal jurisdiction of this matter is vested in this Court and is proper under the Washington long arm statute and traditional notions of fair play and substantial justice.

1.7 This action is brought under, and jurisdiction of this matter is vested in this Court through 28 U.S.C. § 1332 and meets requirements including complete diversity of citizenship and amount in controversy.

1.8 Venue is proper in this action under 28 U.S.C. § 1391, due to a substantial part of the events or omissions taking place in this District, and where any defendant is subject to personal jurisdiction in this District.

II. FACTS

2.1 DigiDeal realleges and reincorporates all preceding averments as if fully set forth herein.

2.2 This breach of contract action stems from a Master Patent Technology License and Sublicense Agreement executed by Shuffle Tech, Poydras, and DigiDeal, effective September 13, 2012 (hereinafter “the Master Agreement”), a First Amendment to the Patent and Technology License and Sublicense Agreement executed by Shuffle Tech, Poydras, and DigiDeal, effective July 22, 2013 (hereinafter “the First Amendment”)(collectively the Master Agreement and the First Amended Agreement are referred to herein as “the Agreements”).

1 2.3 DigiDeal and Shuffle Tech also entered into an Exclusive Patent Technology
2 License Agreement on February 4, 2014, (hereinafter “the Washington Agreement”).
3

4 **Master Agreement**

5 2.4 Shuffle Tech owned certain Licensed Patent Rights and Licensed
6 Technology Rights, which it wished to have developed as mechanical card shuffling
7 devices for use in regulated gaming venues.
8

9 2.5 Poydras wished to obtain a license from Shuffle Tech to use the Licensed
10 Patent Rights and Licensed Technology Rights owned by Shuffle Tech, primarily to grant
11 a sublicense to DigiDeal and earn royalties.
12

13 2.6 DigiDeal wished to obtain an exclusive , perpetual sublicense from Poydras
14 to use the Licensed Patent Rights and Licensed Technology Rights owned by Shuffle
15 Tech and develop and manufacture products for sale and lease utilizing those Rights.
16

17 2.7 On September 13, 2012, the Parties entered into the Master Agreement, in
18 which Shuffle Tech granted a license in its Patent and Technology Rights, including a
19 Master Distribution License to Poydras and DigiDeal for use in regulated gaming venues.
20 See attached as Exhibit 1, Master Patent and Technology License and Sublicense
21 Agreement.
22

23 2.8 The Master Agreement listed Shuffle Tech as the “licensor” of the
24 agreement, Poydras as the “licensee,” and DigiDeal as the “sub-licensee.”
25
26

1 2.9 The Master Agreement set forth the rights and obligations of the parties.

2 2.10 Under the Agreement, Shuffle Tech agreed to indemnify both Poydras and
3
4 DigiDeal with respect to a lawsuit entitled *Shuffle Tech International, LLC v. Wolff*
5 *Gaming, Inc.* pending in the United States District Court for the Northern District of
6 Illinois.

7
8 2.11 Under the Agreement, Shuffle Tech agreed and warranted that it would not
9 become a party to any other agreement or arrangement, which would prevent it from
10 entering into or performing any obligations of this Agreement.

11
12 2.12 Under the Agreement, Shuffle Tech warranted that it was the sole owner of
13 “all right, title and interest in and to the Patent Rights, Technology Rights and
14 Technology Improvements (the Licensed Subject Matter) and every claim released
15 herein, and it has not sold, assigned, transferred or otherwise disposed of any claim or
16 demand, or any portion of or interest in any claim or demand, related to the Licensed
17 Subject Matter or any matter covered by this Agreement.”

18
19
20 2.13 In Section 11.1 of the Master Agreement Shuffle Tech also agreed to:

21 defend, at its expense, any third-party action, suit or proceeding against
22 Licensor, Licensee and/or Sub-Licensee (“Claim”) to the extent such Claim
23 is based upon an allegation that a Licensed Product, as of its delivery date
24 under this Agreement, infringes a valid United States patent or copyright or
25 misappropriates a third-party’s trade secret, subject to the following
26 limitations: (a) Licensor shall have approved in writing the specific
 engineering and design of said Licensed Product, otherwise the terms of this
 Indemnification shall not apply, (b) Licensor’s liability under this section

1 shall be limited to claims of infringement against features described in
2 Licensed Subject Matter, and shall exclude features not specifically
3 described in Licensed Subject unless said features are specifically approved
4 in writing pursuant to 11.1(a), and (c) Licensor's indemnification pursuant to
5 this section shall terminate upon Licensee's exercise of the Right of Option
6 or upon the sale of licensed Subject Matter pursuant to Sections 3.1-3.3.
7 Licensor will indemnify Licensee and/or for the judgment amount finally
8 awarded by a court or agreed to in a settlement and reasonable attorneys'
9 fees resulting from a Claim as provided in this Section. The foregoing states
10 Licensor's entire liability and Licensee's and Sub-Licensee's sole and
11 exclusive remedy with respect to any infringement or misappropriation of
12 any intellectual property rights of any other party.

13 2.14 Shuffle Tech, through its CEO Richard Schultz, made several
14 representations including but not limited to the fact it had already developed a camera
15 based deck auditing system to be used in the products to be manufactured by DigiDeal,
16 that the camera system had already been developed and that the cost of each system unit
17 would be less than \$100 per unit.

18 2.15 The estimate of the price that DigiDeal could manufacture the products was
19 based, in part, on the representations made by Shuffle Tech as to the cost to incorporate
20 the deck auditing system for the shuffler.

21 2.16 Shuffle Tech's representations with regard to the camera system proved
22 false. The camera system had not been developed and the per unit cost to integrate the
23 deck auditing system was over \$450 per unit; not less than \$100 per unit as represented.

24 2.17 Under the Master Agreement, Poydras also agreed to be held to certain
25 obligations.
26

1 2.18 First, Poydras agreed to pay DigiDeal approximately Five-Hundred
2 Thousand Dollars (\$500,000) for research, development, licensing, marketing, and
3 production of the licensed product.
4

5 2.19 The Master Agreement also demonstrated that DigiDeal did not have
6 obligations to pay royalties to either Shuffle Tech or Poydras until certain requirements
7 were met.
8

9 2.20 DigiDeal was exempted from the payment of royalties to both Shuffle Tech
10 and Poydras, until the units were placed into operation.
11

12 2.21 Also, Poydras, not DigiDeal, agreed to pay advanced royalties to Shuffle
13 Tech.
14

15 2.22 Poydras failed to pay the approximately \$500,000 owed to DigiDeal as
16 contracted and paid only \$243,503 of the amount due to DigiDeal for development and
17 initial production.
18

19 2.23 In January 2013, a lawsuit was initiated in Nevada District Court against
20 DigiDeal Corporation by SHFL Entertainment, Inc. under case number 2:12-cv-01782, in
21 which SHFL Entertainment, Inc. alleged that a Licensed Product, manufactured by
22 DigiDeal, infringed a valid United States patent or copyright.
23

24 2.24 On July 11, 2013, prior to the First Amendment, Shuffle Tech entered into a
25 Security Agreement with Kerr IP Group ("KIPG"), granting KIPG a secured interest in
26

1 the royalties due to Shuffle Tech, and the intellectual property owned by Shuffle Tech,
2 which Shuffle Tech had licensed to Poydras and DigiDeal, as collateral in the amount of
3 \$400,000 in violation of the Master Agreement. See attached as Exhibit 2, Security
4 Agreement; and Exhibit 3 Amendment to the Security Agreement.
5

6 **First Amendment**
7

8 2.25 The development of the single-deck, flush-mounted card shuffler with the
9 capability to visually inspect and verify the quantity of shuffled cards was completed by
10 DigiDeal, as contracted.
11

12 2.26 The development process prior to the entry of the First Amendment took
13 longer and cost more than expected and further funding was required to finalize the
14 design and move to production due to no fault of DigiDeal.
15

16 2.27 The development process took longer and cost more than expected in large
17 part because of misrepresentations regarding the camera system made to DigiDeal by
18 Shuffle Tech.
19

20 2.28 As of July 22, 2013, DigiDeal had spent a total of approximately \$276,255
21 for development expense and production of 30 units; an additional \$22,000 for outside
22 engineering of the imaging processing system which Shuffle Tech agreed to pay for; and,
23 over an additional \$150,000 on internal engineering costs.
24
25
26

1 2.29 In addition, the finished product proved to be more costly to manufacture
2 than expected and negotiated in the Master Agreement.

3
4 2.30 Based upon these changes, on July 22, 2013, the Parties entered into a First
5 Amendment to Patent and Technology License and Sublicense Agreement, which related
6 to the same Licensed Patent Rights and Licensed Technology Rights and incorporated the
7 Master Agreement. See attached as Exhibit 4, First Amendment to Patent and
8 Technology License and Sublicense Agreement.

9
10 2.31 The First Amendment again listed Shuffle Tech as the “licensor” of the
11 agreement, Poydras as the “licensee,” and DigiDeal as the “sub-licensee.”
12

13 **Poydras’ Obligations**

14 2.32 Again, as in the Master Agreement, Poydras was held to certain
15 obligations under the First Amendment.
16

17 2.33 Poydras again promised to pay advanced royalties to Shuffle Tech, and to
18 supply DigiDeal with additional monies.
19

20 2.34 The First Amendment again required Poydras to pay approximately
21 \$500,000 to DigiDeal, for research, development, licensing, marketing, and production.
22

23 2.35 The First Amendment increased the advanced royalties owed from Poydras
24 to Shuffle Tech for various expenses incurred by Shuffle Tech. This increased the total
25 advanced royalties from \$500,000 to \$624,325.68 to be paid to Shuffle Tech by Poydras.
26

1 2.36 Poydras was required to immediately pay off outstanding debts owed to
2 Sensory Labs, Watson Rounds, Kerr IP Group. The payment of those outstanding debts
3 by Poydras were to be considered advance royalties to Shuffle Tech.
4

5 2.37 Pursuant to the First Amendment, Shuffle Tech received the majority of its
6 advance royalty from Poydras, however, DigiDeal received only \$243,503 of the
7 \$500,000 due to it for the development and initial production, and, therefore, DigiDeal
8 funded the development and initial production itself.
9

10 2.38 In the First Amendment, DigiDeal did not guarantee funding to Shuffle Tech
11 or Poydras. DigiDeal never agreed to be the guarantor for either Shuffle Tech's nor
12 Poydras' responsibilities in either the Master Agreement or the First Amendment. It was
13 not anticipated nor agreed that DigiDeal would be the guarantor of either Shuffle Tech's
14 or Poydras' obligations, nor that DigiDeal would become the third party funding source.
15
16

17 2.39 As in the Master Agreement, Shuffle Tech again agreed to indemnify and
18 reaffirmed its obligation to pay all expenses related to *SHFL v. DigiDeal* litigation in the
19 First Amendment.
20

21 2.40 Subsequently, Shuffle Tech defaulted on its payments to KIPG. See attached
22 as Exhibit 5, December 2, 2013 letter from Kerr IP Group to Rick Shultz, Shuffle Tech
23 International, Inc.
24
25
26

1 2.41 DigiDeal was left no choice but to fund KIPG so that it would not foreclose
2 or force the sale of the Patent Rights, affecting DigiDeal's license, or withdraw from its
3 representation of DigiDeal in the litigation in which DigiDeal was a named defendant,
4 under the Security Agreement executed between Shuffle Tech and KIPG.
5

6 2.42 In December 2013, DigiDeal was forced to enter into a new fee agreement
7 with KIPG and to essentially guarantee payment of the litigation costs at a higher rate
8 than previously committed by Shuffle Tech so as to avoid the forced sale of the patents or
9 disruption in the defense of the litigation as KIPG had threatened withdrawal from
10 representation.
11

12 2.43 However, DigiDeal was forced into more obligations than contractually
13 required.
14

15 **Post-Termination of Poydras**
16

17 2.44 After the First Amendment was executed, Poydras defaulted on several
18 payments under the Agreements including payments due to Watson Rounds, Sensory
19 Labs, KIPG and monies due to DigiDeal.
20

21 2.45 Due to these and other defaults, Shuffle Tech terminated the Agreements
22 with respect to Poydras on October 30, 2013. See attached as Exhibit 6, Letter from
23 Shuffle Tech, terminating the Agreements as to Poydras.
24
25
26

1 2.46 At that time, Poydras had only paid approximately \$10,000 of approximately
2 \$21,000 still owed to Watson Rounds.

3
4 2.47 Further, Poydras still owed \$12,000 to Sensory Labs, which severely limited
5 DigiDeal's relationship with Sensory Labs, a critical technology supplier.

6 2.48 Poydras never paid more than the \$243,503 of the approximately \$500,000 it
7 is required to pay DigiDeal under the Master Agreement and the First Amendment,
8 making DigiDeal's obligations impossible under the Agreements.

9
10 2.49 DigiDeal, in reliance on the obligations under both the Master Agreement
11 and the First Amendment, continued to expend significant time and monies developing
12 the product.

13
14 **Negotiations and Second Amendment Between Shuffle Tech and DigiDeal**

15
16 2.50 After Shuffle Tech's termination of the Agreements as they related to
17 Poydras in October, 2013, Shuffle Tech and DigiDeal continued negotiations to make the
18 Second Amendment to the Agreements, either as an amendment, or as an entirely new
19 agreement.

20
21 2.51 On November 22, 2013, Rick Schultz wrote to Allen Esparza with the
22 Washington State Gambling Commission and expressed the intent that the current license
23 agreement would be replaced with a two-party intellectual property license agreement
24 between Shuffle Tech and DigiDeal wherein DigiDeal would assume all rights to design,
25
26

1 manufacture, sales, marketing, distribution, installation, servicing or warranting. See
2 attached Exhibit 7, Letter dated November 22, 2013.

3
4 2.52 However, neither Shuffle Tech nor DigiDeal intended to waive or forgive
5 any obligations due under the prior agreements.

6
7 2.53 On February 4, 2014, Shuffle Tech and DigiDeal entered into an Exclusive
8 and Patent Technology License Agreement, relating to the use of the license for sales and
9 leases of manufactured products within the State of Washington. See attached, Exhibit 8,
10 Exclusive Patent Technology License Agreement Limited to the License and Sales and
11 Leases of Licensed Products in the State of Washington.

12
13 2.54 This time, the Washington Agreement listed Shuffle Tech as the “licensor”
14 of the agreement, and DigiDeal as the sole “licensee.”

15
16 2.55 Shuffle Tech and DigiDeal agreed to have Washington law govern this
17 Agreement.

18
19 2.56 Shuffle Tech and DigiDeal also agreed and consented to submit to the
20 exclusive jurisdiction of the courts of the State of Washington and of the United States of
21 America located in Washington State for any actions arising out of the Washington
22 Agreement.

23
24 2.57 Although the Washington Agreement included an integration clause, Shuffle
25 Tech and DigiDeal agreed in the Washington Agreement that it was not intended to
26

1 waive or otherwise forgive any prior breaches of contract, unpaid obligations, or other
2 obligations under the Master Agreement or the First Amendment.

3
4 2.58 The Washington Agreement granted a perpetual, exclusive license from
5 Shuffle Tech to DigiDeal, free from any royalties.

6
7 2.59 The Washington Agreement did not establish DigiDeal as guarantor of prior
8 breaches or unpaid debts by Poydras including payment of advance royalties, payments
9 to Watson Rounds, payments to Sensory Labs, or payments to KIPG.

10
11 2.60 The Washington Agreement did not release Poydras from any of its prior
12 obligations to either Shuffle Tech or DigiDeal, including payment of its obligation to
13 DigiDeal, payments to Watson Rounds, payments to Sensory Labs, or payments to KIPG.

14
15 2.61 The Washington Agreement did not release Shuffle Tech from its
16 obligations including its promise to indemnify DigiDeal, and pay litigation expenses
17 related to *SHFL v. DigiDeal* litigation under the Agreements.

18
19 2.62 Shuffle Tech agreed in the Master Agreement, First Amendment and the
20 Washington Agreement that the license granted was exclusive, and that Shuffle Tech
21 would not grant any other licenses on the subject matter of the Agreements.

22
23 2.63 However, Shuffle Tech continues to reach out to third parties to sell licenses
24 that it already sold to DigiDeal.

1 2.64 As of the date of filing this action, neither Shuffle Tech nor Poydras has paid
2 Watson Rounds or Sensory Labs for the remaining balances owed to them, respectively,
3 or any payments to KIPG, under the Agreements.
4

5 2.65 As of the date of filing this action, Poydras has not paid the monies owed to
6 DigiDeal.
7

8 2.66 As of the date of filing this action, DigiDeal was forced to pay all the
9 litigation expenses, which Shuffle Tech agreed to pay under the Agreements. Shuffle
10 Tech has defaulted in its obligation to pay defense costs.
11

12 2.67 As a direct and proximate result of Shuffle Tech's failure to pay defense
13 costs, DigiDeal has been forced into an unfavorable stipulated stay of litigation
14 prohibiting it from moving forward with placing units in the field and is unable to
15 generate revenues with the product.
16

17 2.68 Richard Shultz, as CEO of Shuffle Tech, acted, authorized and/or directed
18 the wrongful conduct of Shuffle Tech International, LLC.
19

20 2.69 Richard Schultz is individually and/or jointly liable for the wrongful acts
21 of Shuffle Tech International, LLC as described herein.
22

23 **III. FIRST CAUSE OF ACTION:**
24 **BREACH OF CONTRACT BY SHUFFLE TECH**

25 3.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 2.69 as
26 though fully set forth herein.

1 3.2 DigiDeal has performed all of its obligations, covenants and promises to be
2 performed in accordance with the Agreements between the parties.

3
4 3.3 Pursuant to the Agreements, Defendant Shuffle Tech owed for costs of
5 litigation beginning September 12, 2012, for *SHFL v. DigiDeal* litigation.

6
7 3.4 Defendant Shuffle Tech breached its contract with Plaintiff by entering into
8 a Security Agreement with KIPG, defaulting on payments for litigation to KIPG, and
9 refusing to pay, jeopardizing the license agreement, and never paying litigation costs
10 which it repeatedly promised to pay.

11
12 3.5 Defendant Shuffle Tech breached its contract and continues to breach its
13 contract with Plaintiff by continuing to solicit third parties to sell licenses already granted
14 to DigiDeal in the Agreements.

15
16 3.6 Defendant Shuffle Tech breached its contract with Plaintiff by failing to pay
17 Watson Rounds, Sensory Labs and KIPG after the termination of Poydras.

18
19 3.7 Plaintiff has suffered damages in an amount to be proven at trial, as a direct
20 and proximate result of Defendants' breach of the Agreements.

21 **IV. SECOND CAUSE OF ACTION: INTERFERENCE WITH**
22 **CONTRACTUAL RELATIONS BY SHUFFLE TECH**

23 4.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 3.7 as
24 though fully set forth herein.
25
26

1 4.2 At the time of the conduct at issue, DigiDeal was a party to a valid contract
2 with Poydras for a license agreement under the Agreements.
3

4 4.3 Defendant Shuffle Tech had knowledge of that contractual relationship.
5

6 4.4 Shuffle Tech intentionally caused a breach or termination of the contractual
7 relationship between Poydras and DigiDeal.

8 4.5 Shuffle Tech's interference was for an improper purpose or by improper
9 means.
10

11 4.6 DigiDeal has suffered damages in an amount to be proven at trial, as a direct
12 and proximate result of Defendant Shuffle Tech's interference with contractual relations.
13

14 **V. THIRD CAUSE OF ACTION: BREACH OF IMPLIED COVENANT OF**
15 **GOOD FAITH AND FAIR DEALING BY SHUFFLE TECH**

16 5.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 4.6 as
17 though fully set forth herein.
18

19 5.2 Shuffle Tech acted in bad faith and ceased its express obligation under the
20 Agreements to apply "good faith commercial efforts" to execute the Agreements.
21

22 5.3 Shuffle Tech breached its implied covenant of good faith and fair dealing by
23 entering into a Security Agreement with KIPG, defaulting on payments for litigation to
24 KIPG, and refusing to pay, jeopardizing the license agreement, and never paying
25 litigation costs which it repeatedly promised to pay.
26

1 5.4 Shuffle Tech did not pay those litigation costs, and allowed default on its
2 security agreement purely to avoid paying such costs.
3

4 5.5 Shuffle Tech breached its implied covenant of good faith and fair dealing by
5 never paying Watson Rounds, Sensory Labs or KIPG.
6

7 5.6 Shuffle Tech also breached its implied covenant of good faith and fair
8 dealing by continuing to approach third parties to sell licenses already sold to DigiDeal in
9 the exclusive License Agreements.
10

11 5.7 DigiDeal has suffered damages in an amount to be proven at trial, as a direct
12 and proximate result of Defendant Shuffle Tech's breach of implied covenant of good
13 faith and fair dealing.
14

15 **VI. FOURTH CAUSE OF ACTION: BREACH OF CONTRACT BY POYDRAS**

16 6.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 5.7 as
17 though fully set forth herein.
18

19 6.2 Pursuant to the Master Agreement and First Amendment, attached hereto as
20 Exhibits 1 and 2, Defendant Poydras owed approximately \$500,000 to DigiDeal, and
21 only paid \$243,503 of that obligation.
22

23 6.3 Defendant breached its contract with DigiDeal by never paying the full
24 amount of the monies owed to DigiDeal, which it repeatedly promised to pay and
25 reaffirmed in the First Amendment.
26

1 6.4 By making no efforts to pay the monies owed to DigiDeal that it repeatedly
2 and expressly agreed to pay in the Agreements, such failure to pay these monies severely
3 inhibited the ability of the parties to fulfill their contractual obligations under the
4 Agreements.
5

6 6.5 Pursuant to the Agreements, at the time of its termination, Defendant
7 Poydras still owed \$11,000 to Watson Rounds and \$12,000 to Sensory Labs.
8

9 6.6 By making no efforts to pay these costs to Watson Rounds, Sensory Labs,
10 and Kerr IP Group that it repeatedly and expressly agreed to pay in the Agreements, such
11 refusal to pay these costs severely inhibited the ability of the parties to fulfill their
12 contractual obligations under the Agreements.
13

14 6.7 DigiDeal has performed all of its obligations, covenants and promises to be
15 performed in accordance with the Agreements between the parties.
16

17 6.8 Plaintiff has suffered damages in an amount to be proven at trial, as a direct
18 and proximate result of Defendant Poydras' breach of the contract.
19

20 **VII. FIFTH CAUSE OF ACTION: INTERFERENCE WITH**
21 **CONTRACTUAL RELATIONS BY POYDRAS**

22 7.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 6.8 as
23 though fully set forth herein.
24

25 7.2 At the time of the conduct as issue, pursuant to the Agreements, DigiDeal
26 was a party to a valid contract with Shuffle Tech for a license agreement.

1 7.3 Defendant Poydras had knowledge of that contractual relationship.

2
3 7.4 Poydras intentionally caused a breach or termination of the contractual
4 relationship by making no efforts to pay the full amounts owed to DigiDeal that it
5 repeatedly and expressly agreed to pay in the Agreements.
6

7 7.5 Such refusal to pay the monies owed severely inhibited the ability of the
8 parties to fulfill their contractual obligations under the Agreements.
9

10 7.6 Poydras intentionally caused a breach or termination of the contractual
11 relationship by making no efforts to pay the full costs to Watson Rounds, Sensory Labs,
12 and Kerr IP Group which it repeatedly and expressly agreed to pay in the Agreements.
13

14 7.7 Such refusal to pay costs severely inhibited the ability of the parties to fulfill
15 their contractual obligations under the Agreements.
16

17 7.8 Poydras' interference was for an improper purpose or by improper means.

18 7.9 DigiDeal has suffered damages in an amount to be proven at trial, as a direct
19 and proximate result of Defendant Poydras' interference with contractual relations.
20

21 **VIII. SIXTH CAUSE OF ACTION: BREACH OF IMPLIED COVENANT**
22 **OF GOOD FAITH AND FAIR DEALING BY POYDRAS**

23 8.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 7.9 as
24 though fully set forth herein.
25
26

1 8.2 Poydras acted in bad faith and ceased its express obligation under the
2 Agreements to apply “good faith commercial efforts” to execute the Agreements.
3

4 8.3 Poydras has breached its implied covenant of good faith and fair dealing by
5 making no efforts to pay the monies owed to DigiDeal that it repeatedly and expressly
6 agreed to pay in the Agreements.
7

8 8.4 Poydras breached its implied covenant of good faith and fair dealing by
9 making no efforts to pay other costs to Watson Rounds, Sensory Labs and Kerr IP Group
10 that it repeatedly and expressly agreed to pay in the Agreements.
11

12 8.5 DigiDeal has suffered damages in an amount to be proven at trial, as a direct
13 and proximate result of Defendants’ breach of implied covenant of good faith and fair
14 dealing.
15

16 **IX. SEVENTH CAUSE OF ACTION:**
17 **PROMISSORY ESTOPPEL/ RELIANCE DAMAGES**

18 9.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 8.5 as
19 though fully set forth herein.
20

21 9.2 The First Amendment addressed both funds advanced and funding for
22 production, leasing and sales. Poydras promised third party funding and promised that
23 DigiDeal would be funded.
24

25 9.3 Shuffle Tech entered into the First Amendment and accepted advance
26 royalty payments paid to it under the First Amendment.

1 9.4 Believing that it would be paid as agreed by Poydras and Shuffle Tech,
2 DigiDeal funded the development and initial production itself.

3
4 9.5 As of July 22, 2013, the date of the First Amendment, DigiDeal spent
5 approximately \$276,255 for development expense in addition to costs of approximately
6 \$22,000 and an additional approximately \$150,000 on internal engineering costs in
7 reliance on Shuffle Tech and Poydras' promises.

8
9 9.6 To-date, DigiDeal has been forced to incur additional expenses, which
10 exceed \$640,000, including but not limited to approximately:

11
12 \$83,330 paid to Kerr IP Group;

13 \$11,951.93 paid to Watson Rounds;

14 \$3,500 paid to Sensory Labs;

15 \$95,600 for travel, shipping and miscellaneous expenses;

16 \$265,000 estimated engineering development expenses (inside
17 engineering expenses calculated at the reasonable rate of \$40 per hour
18 for approximately 7,000 hours of engineering, compared to contract
19 engineering rates over \$125 per hour);

20 \$58,000 paid to Poydras for payment made to Kerr IP Group under a
21 Loan and Security Agreement dated October 5, 2013; and

22 \$125,000 estimated expenses for parts, labor and manufacturing.

23
24 9.7 DigiDeal was only compensated a total of \$243,500 of which \$100,000 was
25
26

1 considered an engineering fee, leaving only \$143,500 for the remainder of the related
2 expenses.

3
4 9.8 DigiDeal reasonably relied upon the assurances of Poydras and Shuffle
5 Tech.

6 9.9 Poydras and Shuffle Tech knew that DigiDeal would rely upon their
7 assurances.

8
9 9.10 As a direct and proximate result of DigiDeal's reasonable reliance on
10 Poydras' and Shuffle Tech's assurances, DigiDeal was harmed in amounts to be proven
11 at trial.
12

13 **X. EIGHTH CAUSE OF ACTION: UNJUST ENRICHMENT**

14 10.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 9.10 as
15 though fully set forth herein.
16

17 10.2 The First Amendment addressed both funds advanced and funding for
18 production, leasing and sales. Poydras promised third party funding and promised that
19 DigiDeal would be funded.
20

21 10.3 Shuffle Tech entered into the First Amendment and accepted advance
22 royalty payments paid to it under the First Amendment.
23

24 10.4 Believing that it would be paid as agreed by Poydras and Shuffle Tech,
25 DigiDeal funded the development and initial production itself.
26

1 10.5 In reliance on Shuffle Tech and Poydras' promises, DigiDeal has been
2 forced to incur expenses exceeding \$640,000, including but not limited to approximately:

3 \$83,330 paid to Kerr IP Group;

4 \$11,951.93 paid to Watson Rounds;

5 \$3,500 paid to Sensory Labs;

6 \$95,60000 for travel, shipping and miscellaneous expenses;

7 \$265,000 estimated engineering development expenses (inside
8 engineering expenses calculated at the reasonable rate of \$40 per hour
9 for approximately 7,000 hours of engineering compared to contract
10 engineering rates over \$125 per hour);

11 \$58,000 paid to Poydras for payment made to Kerr IP Group under a
12 Loan and Security Agreement dated October 5, 2013.

13 \$58,000 paid to Poydras for payment made to Kerr IP Group under a
14 Loan and Security Agreement dated October 5, 2013; and

15 \$125,000 estimated expenses for parts, labor and manufacturing.
16

17 10.6 DigiDeal was only compensated a total of \$243,500 of which \$100,000 was
18 considered an engineering fee, leaving only \$143,500 for the remainder of the related
19 expenses.
20

21 10.7 Solely because of DigiDeal's efforts and financial investments, Shuffle Tech
22 has a working prototype based upon its patents that it licensed to DigiDeal, which has
23 successfully endured field trials.
24

25 10.8 Shuffle Tech is now actively marketing the DigiDeal designed product and
26

1 the Shuffle Tech patents in the market, without the consent of DigiDeal.

2 10.9 Shuffle Tech has not compensated DigiDeal yet knowingly continues to use
3 DigiDeal's investment to its own benefit.
4

5 10.10 As a direct and proximate result of DigiDeal's investments of time and
6 money, Shuffle Tech has been unjustly enriched.
7

8 10.11 DigiDeal is entitled to compensation in amounts to be proven at trial.

9 **XI. NINTH CAUSE OF ACTION: SPECIFIC PERFORMANCE**

10 11.1 Plaintiff hereby incorporates and realleges paragraphs 1.1 through 10.11 as
11 though fully set forth herein.
12

13 11.2 Plaintiff entered into an agreement for an exclusive, perpetual license to
14 specific Licensed Patent Rights.
15

16 11.3 Plaintiff spent money, expended effort to develop and manufacture products
17 and intellectual property related to and in reliance on the fact that it had an exclusive,
18 perpetual license to the agreed upon Licensed Patent Rights.
19

20 11.4 Due to Plaintiff's efforts, a product has been developed which has
21 successfully endured field trials.
22

23 11.5 Due to Poydras' and Shuffle Tech's breaches, including but not limited to
24 failure to fund the defense of the pending litigation against DigiDeal resulting in
25 DigiDeal being forced into a Stipulation halting sales, DigiDeal has been unable to move
26

1 forward with placing units in the field and is unable to generate revenues with the
2 product.

3
4 11.6 It is difficult to prove Plaintiff's damages with reasonable certainty as to the
5 loss of business opportunities, lost profits, exposure to litigation, loss in value to related
6 patents, et cetera.

7
8 11.7 The collection of an award of damages is not likely.

9
10 11.8 The Licensed Patent Rights are unique and money damages cannot
11 adequately compensate for the Defendants' breaches.

12 11.9 Specific performance, granting DigiDeal a two-party, exclusive, perpetual
13 license, as licensee as contemplated when the Agreements were terminated as to Poydras,
14 is the most adequate remedy for a breach of the relevant contracts.
15

16 **XII. RESERVATION**

17 Plaintiff reserves the right to amend this Complaint to add claims, as discovered
18 through the discovery process.
19

20 **XIII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for relief as follows:

22
23 1. For a preliminary and permanent injunction that Poydras, Shuffle
24 Tech and Schultz, their agents, servants, representatives, attorneys, partners, successors,
25 predecessors, assigns, and all persons acting for, with, by, through or under them, and
26

1 each of them, directly or indirectly be restrained and enjoined from selling, transferring,
2 licensing, assigning, further encumbering, or in any way conveying the patent portfolio or
3 royalties relating to the Licensed Patent Rights, which are the subject matter of the
4 Agreements between the parties;
5

6 2. For all damages as may be proven at trial;
7

8 3. For an award of Plaintiff's reasonable attorney's fees and costs
9 incurred herein;
10

11 4. For pre-judgment and post-judgment interest;
12

13 5. For specific performance, including but not limited to the grant of an
14 exclusive, perpetual license to DigiDeal by Shuffle Tech, at a reasonable royalty rate;
15

16 6. Award DigiDeal a constructive trust over the patent portfolio; and
17

18 7. For such other and further relief as the Court deems just and equitable.
19

20 DATED this 19th day of August, 2014.
21

22 /s/ Eowen S. Rosentrater
23 EOWEN S. ROSENTRATER, WSBA No. 36744
24 *Attorney for DigiDeal Corporation*
25
26